



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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### Draft Minutes Zoning Board of Adjustment

May 24, 2016

7:30pm @ Community Development Department

Mark Samsel, Chairman - present

Mike Mazalewski, Alternate - present

Heath Partington, Vice Chair - present

Kevin Hughes, Alternate - present

Pam Skinner, Secretary - present

Jim Tierney, Alternate - excused

Mike Scholz, Member - excused

Jay Yanneco, Alternate - excused

Bruce Breton, Member - present

#### Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Andrea Cairns, Minute Taker

Meeting called to order at 7:31p.m. by Chairman Samsel.

#### Lot 8-C-101, Case # 12-2016

**Applicant/Owner**-Wanda Stanley

**Location**-59 Castle Hill Road

**Zoning District**-Rural and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow construction of a 26'x26' garage to be 10 ft. from the side property line. The garage will be 100+ ft. from the WWPD

Ms. Skinner read the abutters list into the record.

Kevin Hughes was seated for Mike Scholtz.

Ms. Wanda M. Stanley presented the application. She noted the design of the garage would be in line with the design of the home. There would be no negative impact to the property values, and actually may improve values. The site of the planned garage will be on the existing driveway. There is approximately 100' between the site of the garage and the neighboring home. The abutters are all in favor of the project.

Ms. Stanley provided garage plans and photos of the site, as it exists today (Exhibit A). The photos showed the buffer between the neighbors yard and the discontinued Windham Road. She added that she had the property surveyed and you could see the flags identifying the property bounds in the photos.

Ms. Stanley read the five criteria into the record.

Mr. Partington questioned if there were any other locations for the garage. Ms. Stanley noted it was the only feasible location because of a large tree on the property.

Chairman Samsel invited input from the public. There was no one in attendance to speak in favor or against the project.

**MOTION: Mr. Breton made a motion to go into deliberative.**

**Mr. Hughes seconded the motion.**

**No discussion**

**Vote 5-0**

**Motion carries**

Ms. Skinner noted that the Conservation Commission submitted a letter and they have no issues or concerns with the project.

Chairman Samsel believed the five points had been met and had no issues with the application.

Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five criteria.

**MOTION: Mr. Breton made a motion to grant the variance from Section 702, App. A-1 of the Windham Zoning Ordinance to allow construction of a 26'x26' garage to be 10 ft. from the side property line. The garage will be 100+ ft. from the WWPD**

**Mr. Hughes seconded the motion.**

**No discussion**

**Vote 5-0**

**Motion carries**

Chairman Samsel reminded the applicant there is a 30-day appeal period.

**Lot 11-A-520 & 530 Case # 13-2016**

**Applicant-**The Dubai Group

**Owner-**Village Center Properties, LLC

**Location-** 13 & 15 Indian Rock Road

**Zoning District-**Village Center District and Wetland & Watershed Protection District (WWPD).

Variance relief is requested from **Section 601.3** of the Windham Zoning Ordinance, to allow multiple buildings with a 6,722 sq. ft. impact in the WWPD and parking with an 11,563 sq. ft. impact in the WWPD.

Mr. Mazalewski was seated for Mr. Scholz.

Ms. Skinner read the abutters list into the record.

Karl Dubay presented the application noting Mr. McCarthy is the client and owner. Mr. Dubay reviewed the history of the project. They were granted a variance for the parking area and septic which was granted unanimously. Since then, Mr. McCarthy secured development agreements with the bank and they asked for a few design revisions. They also heard from the abutters, as well as Planning, and Conservation and made revisions that will have less impact than the original plans.

The original variance was granted “per plan” so even though they are reducing the impact, they were asked to come back to present the revised site plan.

Mr. Dubay noted the old plan looked too much like a strip mall and they wanted the layout broken up more. The bank was an obvious separate structure, so they broke it up and added a pond feature between the buildings. They widened the walkways and made it more aesthetically pleasing. They reduced the impact for both the building and parking area.

Mr. Dubay noted the application referenced the previously approved file. They refiled the paperwork; the arguments are all the same as the previous application. They also submitted a one-page memo explaining the changes. They hope the public sees it as an improved plan.

Mr. Dubay noted they spent an extensive amount of time with the Planning Board regarding the entrance off Rt. 111. They took into consideration the neighbors in the back. They moved the building back to put in the pond feature. Mr. Dubay pointed out on the plans exactly what changed for the benefit of the public:

- The drive-through canopy between the bank and the drive through changed. It provides additional queuing around the back of the building.
- The westerly end of the pavement was pushed back from Rt. 111 to put in water treatment. This takes care of NHDES compliant detention and treatment and provides more treatment than the previous system.
- The other building (retail/office) slid back which is a further reduction of the WWPD impact.
- The site is landscaped and lit in accordance with regulations.
- There is much better pedestrian flow.

Mr. Dubay reviewed the five criteria for the record.

Chairman Samsel questioned whether there was an increase or decrease in square footage from the previous plan.

Mr. Dubay noted that the parking area is decreased by 300 sq. ft., and the building is decreased by 1,100 sq. ft. He requested that the board approve the application as “no more than” instead of “per plan” which gives them the ability to make a few more design tweaks without having to come back.

Mr. Partington felt it was correct for the application to be reapproved since the plans went from two to three buildings. The original variance was granted for two buildings. Mr. Dubay noted by building code, if the roof is connected, it would be considered one building.

Mr. Partington questioned if the ditch draining into the culvert under Rt. 111 would change. Mr. Dubay noted their plans have not changed for that. They don’t want to mix the stream water with the development water. The water will be directed separately from the DOT system.

Chairman Samsel invited input from the public. There was no one in attendance to speak in favor of or against the project.

**MOTION: Mr. Breton made a motion to go into deliberative.**

**Mr. Mazalewski seconded the motion.**

**No discussion**

**Vote 5-0**

**Motion carries**

Mr. Partington reviewed the five criteria and stated the plan is reasonable and met all five criteria.

Chairman Samsel concurred and questioned if the board would be comfortable granting the variance without limiting it as “per plan.”

Mr. Breton was uncomfortable granting a blank variance. Chairman Samsel agreed.

**MOTION: Mr. Partington made a motion to grant the variance from Section 601.3** of the Windham Zoning Ordinance, to allow three buildings with a 6,722 sq. ft. impact in the WWPD and parking with an 11,563sq. ft. impact in the WWPD per plan.

**Ms. Skinner seconded the motion.**

**No discussion**

**Vote 5-0**

**Motion carries**

Chairman Samsel reminded the applicant there is a 30-day appeal period.

**Lot 11-C-13, Case # 14-2016**

**Applicant**-Edward N. Herbert Assoc., Inc.

**Owner**-Indian Rock Realty, LLC

**Location**-55 Enterprise Drive

**Zoning District**-Business Commercial A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section 601.3** of the Windham Zoning Ordinance, to allow a 4,434 sq. ft. increase in parking, a 279 sq. ft. increase in misc. concrete pads and a 44 sq. ft. vestibule in the WWPD. This will result in a total WWPD impact of 4,757 sq. ft.

Ms. Skinner read the abutters list into the record.

Mr. Hughes was seated for Mr. Scholtz.

Ms. Skinner read the letter from Indian Rock LLC giving permission to Edward N. Herbert Assoc., Inc. to represent him.

Mr. Gendron presented the application. He reviewed the history of the project. He noted the change to the roadway helped him break up the parking so it doesn't look like a sea of pavement. The plan gets them closer to the amount of parking that the site requires. Although they are requesting increases in the WWPD area, they decided to use porous pavement throughout all impervious surfaces.

Mr. Gendron noted that the Conservation Commission reviewed the plans and were happy with the new plans. They will be going to the Planning Board for site plan approval. He reviewed the different areas and their total impact:

1: Parking - 4,434 sq. ft.

2: Vestibule - 44 sq. ft.

3: Sidewalk – 41 sq. ft.

- 190 4: Pad – 140 sq. ft.  
191 5: Dumpster – 38 sq. ft.  
192 6: Scissor Jack – 60 sq. ft.  
193

194 Mr. Gendron read the five points into the record.  
195

196 Chairman Samsel opened the meeting to the public.  
197

198 *Diana Fallon, 26 Rock Pond Road*

199 Ms. Fallon noted that even though they are looking at additional parking areas, the fact that all  
200 impervious surfaces are going to be porous is impressive for a project of this size. Most developers  
201 don't think that way. She doesn't feel there would be any diminished property values.  
202 She would also hate to see the additional greenscape area changed. She would like them to vote in  
203 favor of the project.  
204

205 Chairman Samsel questioned if there was a maintenance plan for the pavement. Mr. Gendron noted  
206 that there was and the Planning Board would require that it be on the plans. They will clean it twice  
207 a year and routinely make sure it is performing properly.  
208

209 Ms. Skinner read correspondence:

- 210 • Richard Armstrong supporting the project.
- 211 • Peter Griffin – an email supporting the proposed level of landscaping and felt the porous  
212 pavement should be a model.
- 213 • Erin Cove Associates - Marilyn Bailey, President – no objections with the request
- 214 • Conservation Commission - no issues with the proposed plan  
215

216 **MOTION: Mr. Breton made a motion to go into deliberative.**

217 **Mr. Hughes seconded the motion.**

218 **No discussion**

219 **Vote 5-0**

220 **Motion carries**  
221

222 Chairman Samsel noted the plan is a nice improvement for the business and the neighborhood. The  
223 largest impact being the parking lot, which is a much better design. The landscaping plan is also  
224 commendable.  
225

226 Mr. Partington reviewed the five criteria and stated the plan is reasonable and met all five criteria.  
227 He added that he voted against the application in 2011.  
228

229 Chairman Samsel noted it may set an example for other businesses. Mr. Hughes noted the use of the  
230 pavement is huge improvement.  
231

232 **MOTION: Mr. Breton made a motion to grant the variance from Section 601.3 of the Windham**  
233 **Zoning Ordinance, to allow a 4,434 sq. ft. increase in parking, a 279 sq. ft. increase in misc.**  
234 **concrete pads and a 44 sq. ft. vestibule in the WWPD. This will result in a total WWPD impact of**  
235 **4,757 sq. ft. per plans submitted.**

236 **Mr. Hughes seconded the motion.**

237 **No discussion**

238 **Vote 5-0**

239 **Motion carries**

240  
241 Chairman Samsel reminded the applicant there is a 30-day appeal period.

242  
243 **Lot 17-G-26, Case # 15-2016**

244 **Applicant-Owner** Glazunov Concerto, LLC, Karl Dubay, The Alex L. Ray 1999 Revocable Trust

245 **Location**-84-88 Range Road

246 **Zoning District**-Gateway District and Cobbett's Pond & Canobie Lake Watershed Protection  
247 District

248 Variance relief is requested from **Section 616.6.4.2** of the Windham Zoning Ordinance, to allow the  
249 subdivision of this parcel with the residual lot increasing in the percentage of impervious lot  
250 coverage from 61.37% to 65.16%. An increase in the percentage of impervious lot coverage is not  
251 allowed.

252  
253 Mr. Mazalewski was seated for Mr. Scholz.

254  
255 Ms. Skinner read the abutters list into the record.

256  
257 Karl Dubay presented the application. He gave a history of the project. He noted that he is  
258 purchasing the East House from the owners of the Common Man restaurant. They are hoping to  
259 create a lot line to divide the two properties, but by virtue of putting in the lot line, they are making  
260 the restaurant less conforming in terms of percentage of impervious surface. It is around 2/3  
261 impervious and because of the lot line they will increase that a bit. The lake protection ordinance  
262 doesn't have any provision to recognize shared easements with lot lines. They are not making any  
263 changes to the building. They are making significant improvements to the East House; they love it  
264 and want to stay there.

265  
266 Chairman Samsel questioned which lot would increase in impervious surface. Mr. Dubay noted it  
267 would be the restaurant lot. There is a small amount of green area around the East House, which is  
268 part of their pervious surface. By taking that green area out they go from 61% to 66% impervious  
269 surface.

270  
271 Mr. Dubay read the five criteria.

272  
273 Mr. Partington noted they could be creating the potential for increased impervious surface. Mr.  
274 Dubay noted it wasn't by physical construction. They wouldn't be increasing the impervious flow  
275 into the lake.

276  
277 Mr. Samsel invited input from the public. There was no one in attendance to speak in favor or  
278 against the project.

279  
280 Mr. Dubay noted that the Common Man doesn't fertilize their lawns because of their proximity to  
281 the lake. There are many homes in the watershed area that do fertilize. If you want to protect the  
282 pond, you can start with enforcing that.

283  
284 **MOTION: Mr. Breton made a motion to go into deliberative.**

285 **Mr. Mazalewski seconded the motion.**

286 **No discussion**

287 **Vote 5-0**

288 **Motion carries**

289  
290 Chairman Samsel noted he was present for the original variance. It was a very extensive plan that  
291 was brought forth. He agrees it is quite a unique project and this issue probably wasn't thought of  
292 when they changed the zoning ordinance. He doesn't have an issue with the request.

293  
294 Mr. Mazalewski feels it does seem to be in line with the goals of the gateway district.

295  
296 Mr. Partington reviewed the five criteria and stated the plan is reasonable and met all five criteria.

297  
298 **MOTION:** Mr. Partington made a motion to grant the variance from **Section 616.6.4.2** of the  
299 Windham Zoning Ordinance, to allow the subdivision of this parcel with the residual lot increasing  
300 in the percentage of imperious lot coverage from 61.37% to 65.16%.

301 **Mr. Breton seconded the motion.**

302 **No discussion**

303 **Vote 5-0**

304 **Motion carries**

305  
306 Chairman Samsel reminded the applicant there is a 30-day appeal period.

307  
308 **Lot 14-B-2005, Case # 8-2016**

309 Request for re-hearing of the decision made on 4-12-2016.

310  
311 Mr. Mazalewski will continue to sit in since he was present for the original hearing.

312  
313 Chairman Samsel noted the board needed to determine if there was any new information presented  
314 or any technical errors made on behalf of the board.

315  
316 The original decision was made April 12, 2016 case number 8-2016.

317  
318 There were six items brought forward, Chairman Samsel reviewed each one and asked for input.

319  
320 Mr. Breton noted that he was not present at the original hearing even though the minutes marked  
321 him as present. He went back and reviewed the tape to confirm.

322  
323 4a. No technical errors, no new information

324  
325 4b. No technical errors, no new information

326  
327 *Discussion:* Mr. Samsel felt there was a technical error. He feels there is a conflict in that district—a  
328 rooming house is no different from a single-family residential home. Mr. Breton agreed.

329 Mr. Partington disagreed and felt it is an essential change in character. Although the use may be like  
330 a single-family home, they are commercial enterprises. Chairman Samsel polled the board: 3 did not  
331 feel there was a technical error, 2 felt there was.

332  
333 C. No technical errors, no new information

334  
335 *Discussion:* Chairman Samsel felt they made a technical error by not placing conditions or asking  
336 the applicant if they welcomed conditions. Mr. Breton agreed. Mr. Partington did not feel they made

337 a technical error since the board is aware that they can put conditions on an approval but it's not  
338 their job to push a plan to meet the five criteria by condition only. Mr. Mazalewski and Ms. Skinner  
339 did not feel a technical error was made.

340  
341 D. No technical errors, no new information

342  
343 E. No technical errors, no new information

344  
345 *Discussion:* Chairman Samsel felt there was a technical error made, but no new information. Mr.  
346 Partington disagreed. Mr. Mazalewski felt there was a technical error, but no new information.

347  
348 Mr. Partington felt it was so far out of what is perceived in that zone. Chairman Samsel didn't feel it  
349 was a stretch of use.

350  
351 Chairman Samsel polled the board. 3 felt they did not make a technical error, 2 felt they did.

352  
353 F. No technical errors, no new information

354  
355 *Discussion:* Chairman Samsel felt because of the Rt. 111 access he feels there was a technical error.  
356 He doesn't feel the access was discussed in greater detail and they need to consider health and  
357 safety. That road is not a safe road. Mr. Breton agreed.

358  
359 Chairman Samsel polled the board. 3 felt they did not make a technical error, 2 felt they did.

360  
361 MOTION:  
362 Mr. Partington made a motion to deny the rehearing request for Lot 14-B-2005, Case # 8-2016  
363 **Mr. Mazalewski seconded the motion.**

364 **No discussion**

365 **Vote 3-2**

366 **Motion carries**

367  
368 Ms. Skinner recused herself. Mr. Hughes was seated in her place.

369  
370 **Review of 4/12/16 Minutes**

371 The board member listing was incorrect, Mr. Breton was not present. Mr. Hughes was present.

372 **MOTION:**  
373 **Mr. Partington approved the 4/12/16 minutes as amended**

374 **Mr. Hughes seconded the motion.**

375 **Vote 4-0-1, Mr. Breton abstained.**

376 **Motion carries.**

377  
378 **Review of the 5/10/16 Minutes**

379 L22 change "Bretton" to "Breton"

380 L24 add "Minutes were moved up in sequence by the Chair knowing a member would be late for  
381 the case, allowing the full board to be seated."

382 L43 change "hearing" to "rehearing" and "would not" to "do not"

383 L44 should read, "For rehearing requests they only determine if..."

384 L51 should read, "...challenge to the original decision..."

385 L125 should read, "...include line numbers on the draft version moving forward."



386 **MOTION:**  
387 **Mr. Partington approved the 5/10/16 minutes as amended**  
388 **Mr. Mazalewski seconded the motion.**  
389 **Vote 4-0-1, Mr. Breton abstained.**  
390 **Motion carries.**  
391  
392 **New business**  
393 Received an invitation to the Windham Presbyterian Church Bell Ringing Event to honor the  
394 building rehabilitation. The event was held on 5/22/16. Chairman Samsel thanked them for the  
395 work.  
396  
397 Brochures from the Canobie Lake Protective Association  
398  
399 Park Place Lanes – bowling passes  
400  
401 **MOTION: Mr. Breton made a motion to adjourn at 9:48 p.m. Mr. Partington seconded the**  
402 **motion.**  
403 **Vote 5-0-0.**  
404 **Motion passes.**  
405  
406 **Submitted by Andrea Cairns**